

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1863

HON. JULIO CESAR PEREZ, Secretary of the Treasury of
the Commonwealth of Puerto Rico, et al

Petitioners,

v.

JUDITH RODRIGUEZ DE QUINONEZ, LUIS S. PARRILLA
AND ANTERO SOLIS LAZU

Respondents.

**ON PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST
CIRCUIT**

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the refusal of the First Circuit Court of Appeals to judicially notice a recently enacted statute of the Commonwealth of Puerto Rico because of the inexcusable neglect of counsel is such an important question to warrant review by certiorari.

2. Whether the holding of the First Circuit Court of Appeals to the effect that the due process rights of three bank directors were violated when they were removed by the Secretary of the Treasury of the Commonwealth of Puerto Rico without hearing for allegedly having participated in acts and omissions in violation of their fiduciary duties as a result of which the bank suffered substantial losses is in conflict with the applicable decisions of this Honorable Court.

STATEMENT OF FACTS

Banco Cooperativo de Puerto Rico organized under the terms of Law 88 of June 21st, 1966, approved by the Legislature of the Commonwealth of Puerto Rico, is owned by its shareholders and its affairs managed by a Board of Directors composed of twelve persons nine of which are elected for a term of years by the general assembly of the Bank's shareholders. Section 759, Title 7 L.P.R.A.

Respondents were three of the nine elected directors for a term of three years whose term had not expired when on May 9th, 1977, they were removed from their positions by the Secretary of the Treasury of the Commonwealth of Puerto Rico through a letter that accused them of having participated in acts that "are contrary to the sound banking practices and for having participated in omissions or practices constituting a violation of your fiduciary duty as a director, as a result of which the Bank has sustained a substantial financial loss". Petitioner's App. XII, p. 53a.

Of the twelve directors, only the three respondents and a fourth director, not a party to this action, were removed. The Secretary did not act against the rest

of the directors of the Bank. The Secretary appointed four new directors to substitute the removed ones.

Respondents did not receive any other statement except for the letter, particularizing the charges or reasons serving as a basis for their removal nor were they afforded a prior or subsequent hearing to contest its validity.

On May 2nd, 1977, the Governor of Puerto Rico, Carlos Romero Barcelo, had addressed the people of Puerto Rico through radio or television with reference to the economic situation for which both the Banco Obrero and Banco Cooperativo de Puerto Rico were going through. In his speech he stated, among other things:

"I want to emphasize the fact that most of the people who owe money to the Banco Obrero and the Banco Cooperativo are simply debtors who have not incurred in any fault other than not having been able to pay or not paying. When I speak about those who have plundered these Banks, that is, those who have divested the workers and the cooperative movement of what rightfully belonged to them. I am referring to those individuals who due to their close relationship and economic or other ties with officials or some Director of the Bank; or because of his position in the Bank or his blood ties with persons in high government spheres; have used said influences and relationships to secure loans without a collateral or sufficient guarantee, and who used and disposed of said money belonging to the Bank as if it were their own." Appendix I

On May 5, four days prior to the date when respondents were actually removed, the statute upon which the Secretary of the Treasury acted to oust respondents was amended to substitute "or" for

"and" with respect to the causes for which a director could be removed thus phrasing the causes in the disjunctive.

The issue of the economic condition of the Banco Cooperativo, the speech of the Governor denouncing the scandal and the removal of respondents on May 9, 1977, received full display by the Puerto Rican press during the month of May, 1977. App. II

At the time of their removal, the Cooperative Bank had regulations in effect which provided for the removal or dismissal of directors for a number of reasons including the case in which such directors acted in any form prejudicial to the interests of the Bank. Said regulations provided for a hearing and appeal in case of a removal a director. When they were removed no charges were pending against them. App. II

REASONS FOR DENYING THE WRIT OF CERTIORARI

1. The decision of the Court of Appeals for the First Circuit has not decided any important state or territorial question in conflict with applicable state or territorial law; neither has so far departed from the accepted and usual judicial court proceedings to call for an exercise of this Honorable Court power of supervision; neither there are any other special and important reasons to warrant this Honorable Court to exercise its discretion in favor of granting the Petition.

2. The decision of the U.S. Circuit Court of Appeals is correct and in harmony with the applicable decisions of this Honorable Court.

ARGUMENT

A. The decision of the Court of Appeals for the First Circuit has not decided any important state or territorial question in conflict with applicable state or territorial law; neither has so far departed from the accepted and usual judicial court proceedings to call for an exercise of this Honorable Court power of supervision; neither there are any other special and important reasons to warrant this Honorable Court to exercise its discretion in favor of granting the Petition.

Petitioners' complaint to this Honorable Court is that Circuit Court of Appeals refused to consider a recently enacted amendment to the challenged statute that arguably could save its constitutionality on the grounds it was never brought to the attention of the Circuit Court until after the opinion and judgment of the Court issued on March 30th, 1979. Petitioners' position is that it was the duty of the Circuit Court to take judicial notice of the amended statute in spite of the fact that it was never brought to its attention and the Court had no way of acquainting itself with this statute except through the action of the parties.

We fail to see what important question this petition presents to warrant this Honorable Court to entertain it. The only questions presented are whether this Honorable Court should reverse the conclusion of the U.S. Circuit Court of Appeals as to the effect that there had been no excusable neglect on the part of petitioners in not acquainting the Court with a recently amended controlling statute and whether the First Circuit Court of Appeals was bound to take judicial notice of the amendment to the statute not brought to its attention in spite of the inexcusable neglect of

counsel. We consider that the U.S. Circuit Court of Appeals in its opinion on petition for rehearing was very explicit stating its reasons why it did not consider that there had been excusable neglect on the part of petitioners and why it would not agree to a reargument of the case to permit introduction of a recently amended statute. It is to be noted that it was not until after the judgment of March 30th, that petitioners brought to the attention of the Honorable Court the amended statute even though by their own admission, they had knowledge of it when they argued the case before the Honorable Circuit Court of Appeals on November 7, 1978.

To permit rehearings every time that because of some counsel neglect a provision of law not accesible to the reviewing court is not brought to its attention would really place an enormous burden and would otherwise clog the already heavy calendar of the reviewing courts who are pressed for time and resources. As the Circuit Court stated in its opinion:

"We find it an intolerable imposition on our time and limited resources to grant a rehearing for hitherto undisclosed statute."

There are no important considerations or reasons that would warrant this Honorable Court to overrule the determination of the U.S. Circuit Court of Appeals with regard to the circumstances in which said Court will grant relief to a party from a judgment based on excusable neglect. On the contrary, the ruling of the Circuit Court in this regard is a sound one based on principles of judicial administration. See *Spound v. Mohasco Industries Inc.*, 534 F.2d 404 (1976) Cert Den. 429 U.S. 886.

Petitioner's contention that even in spite of the fact of his counsel failure to cite the law, the Court was bound to take judicial notice of it irrespective of whether it was a recently amended statute not yet in the official reports and not in the English language, overlooks the hard fact that the Circuit Court was not dealing with a federal statute or any other state enacted in the English language readily available to the Court. The truth is that unless brought to its attention by the parties, the Court would never discover the amendment. Under those circumstances, it was not bound to take judicial notice of it. Under those circumstances, such recent amendment in the Spanish language should be treated as it were foreing law and regarded as a fact. 20 Am Juris Sec. 48, p. 73.

B. The decision of the U.S. Circuit Court of Appeals is correct and in accordance with the decision of this Honorable Court.

The Court stated in its opinion on rehearing that even under the amended statute it was a close question, giving the accompanied circumstances, whether there was not such a stigma as to give rise to the due process rights discussed in its opinion.

We have in our statement of facts added certain facts omitted by petitioners which reinforce the conclusion that even under the amended statute respondents were deprived of their due process rights.

The Court of Appeals in its initial opinion did not consider necessary to decide whether plaintiffs were denied a property interest in being deprived of a di-

rectorship in a bank without prior notice or hearing. The Court stated:

"Section 768A may be opened to an interpretation, in line with that given in the ordinance in *Bishop v. Woods*, mitigating the existence of any fourteenth amendment interest in serving as a director, although three factors not present in *Bishop v. Woods* the existence of a specific term (three years), the exceptional grounds for removal (dishonesty), and the fact that the appointing authority (the shareholders) differs from the removing authority (the Secretary)-point against such an interpretation. We do not pursue the matter further, however, because wholly apart from whether a directorship itself is an interest protected by the fourteenth amendment, we believe that adding the stigma of a discharge for dishonesty gives rise to such an interest." Petitioner's App. p. 4a

Our argument before the U.S. Circuit Court of Appeals had been that the Secretary of the Treasury could only remove respondents for cause. Section 768(a), Title 7 L.P.R.A. The Secretary of the Treasury did not appoint, select, or elect them to their positions. Neither paid for what they received for attending the meetings of the Board of Directors. Nor were these plaintiffs-appellants employees of the Commonwealth of Puerto Rico. We states in our brief before the First Circuit Court and repeat here that:

"In those circumstances the removal of plaintiffs-appellants from their positions as directors of the Bank is governed by the Constitutional principles spelled out in a series of cases starting with *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) and continuing with *Bell v. Burson*, 402 U.S. 535 (1971);

Fuentes v. Shevin, 407 U.S. 67 (1972); *Mitchell v. Grant*, 416 U.S. 600 (1974) and *North Georgia Finishing Inc. v. Dicheem Inc.*, 419 U.S. 601 (1975). They stand for the proposition that except in extraordinary circumstances before a person can be deprived of a property interest even in a temporary manner, due process demands some form of prior hearing appropriate to the nature of the case. The range of property interests protected is wide. Property for this purposes has the most ample meaning and includes what it may be considered "privileges". *Bell v. Burson*, 402 U.S. 539 (1971). The same constitutional restraint against the deprivation of property without minimal due process applies when the interest is liberty which even has a wider meaning than property. In *Board of Regents v. Roth*, 408 U.S. 564 (1971), the Supreme Court enumerated some of the things liberty means to the citizens which are protected by the Due Process Clause of the Constitution. There it said:

'While this Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fourteenth Amendment], the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390, 399. In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed.' Page 572.

In the light of the definitions of property and liberty for the purpose of its meaning within the due process clause of the Constitution it does not occur to us how can it be questioned that the position as a director of a private bank which one has gained through election and from which one derives some economic benefit and the sense of participation in the affairs of the association of which one is a member is not a property or liberty interest of enough stature to warrant constitutional protection. See *Feinberg v. Federal Deposit Insurance Corporation*, 522 F.2d 1335 (1975) and *Feinberg v. Federal Deposit Insurance Corp.*, 420 Supp. 109 (1976); *Manges v. Camp*, 474 F.2d 97 (1974). These cases are clear authority for the proposition that the interest of a director in his position as an elected director of a private institution merits careful constitutional protection."

Therefore, we submit that irrespective of the existence of any stigma attached to the removal, the decision of the U.S. Circuit Court of Appeals is correct on the grounds that respondents were denied of their property interests without prior notice or hearing in violation of the due process clause.

We contend further that despite the last minute amendment to the statute, the removal of respondents was consummated in a highly stigmatizing manner.

Firstly: The amendment to the statute eliminating the additional requirement of personal dishonesty to the violation of fiduciary duties that resulted in financial losses to the bank was only enacted four days prior to the removal of respondents. Therefore, they had been elected and had discharged their duties under a statute which only allowed removal if their vi-

olation of their fiduciary duties which caused damage to the bank was accompanied by personal dishonesty. Dismissing them for acts occurred before the statute was amended constituted a retroactive application of the statute. Unless the statute explicitly permitted such retroactive application or unless the removal was specific as to the fact that no personal dishonesty was charged, the letter had the clear implication of dishonesty.

Secondly: The manner in which they were removed which was preceded by a televised speech by the Governor of Puerto Rico, on May 2nd, 1977, to the effect that certain persons had used influences and relationships of directors or officials of the bank to secure loans without a collateral or sufficient guarantee seen in conjunction with the letter of dismissal which did not disclaim any personal dishonesty and expressly removed them for having participated in acts that are contrary to sound banking practices and for having participated in omissions or practices constituting a violation of their fiduciary duties as directors, as a result of which the bank had obtained substantial financial losses constitute a stigmatizing charge.

The only sensible interpretation to the letter of dismissal seen in its context is that the Secretary of the Treasury was removing the directors for having used their positions and influence as directors of the bank so that the directors' friends could obtain money from the bank without collateral causing the bank to loose a substantial amount of money. That the directors had violated their fiduciary duties to protect the assets of the bank that were entrusted to their management in that they preferred the interest of their friends to the interest of the bank.

This charge without more qualification imputes respondents with a breach of trust, conduct which is unethical or immoral irrespective of any label of personal dishonesty. *Twin Lick Oil Co. v. Marbury*, 91 U.S. 587 (1876); *Farmers Bros. Co. v. Huddle Enterprises Inc.*, 366 F.2d 143 (1966).

It is a charge of a serious nature sufficient to come within the test and teachings of this Honorable Court. The test is whether in connection with the termination of an employment status the government employer makes a charge which might seriously damage the employee's standing and reputation in the community. *Bishop v. Woods*, 426 U.S. 341 (1976); *Owen v. City of Independence, Missouri*, 560 F.2d. 925 (1977), p. 935; *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

No one can seriously contend that the terms of the letter itself without more constituted statements that unless true, were defamatory and likely to damage respondents standing and reputation in the community. If the surrounding circumstances are added, to wit: the speech of the Governor¹ and the fact that only respondents and another director were removed,

¹ We disagree with the Circuit Court of Appeals opinion stated in footnote 3 of p. 35 of petitioner's App. that respondents had not been stigmatized by the Governor's speech and that there is no nexus between the speech and the removal. By charging immorality and irresponsibility in the handling of the bank's fund and by alleging that some individual due to their close relationship and economic or other ties with some official or director of the bank obtained money without collateral seen in conjunction with removal of the 4 directors and not the whole Board, respondents were being identified and related to the causes that brought economic distress to the Bank. See *Owen v. City of Independence, Missouri*, 560 F.2d. 925 (1977)

it is clear that the stigma was amply abundant in the dismissal irrespective whether by the amendment the charge of personal dishonesty was not necessary included in the letter of dismissal.

CONCLUSION

For all the foregoing reasons it is respectfully requested that the petition of certiorari by petitioner be denied.

In San Juan, Puerto Rico, this 7th day of September, 1979

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1105 Banco Popular Center
Hato Rey, Puerto Rico 00918
753-0875, 764-5436

CERTIFICATE OF SERVICE

IT IS CERTIFIED that a copy of the foregoing opposition was mailed to Hon. Hector A. Colon Cruz, Solicitor General of Puerto Rico, Box 192, San Juan, PR 00902., this 7 day of September, 1979.

A. J. AMADEO MURGA

APPENDIX

1a

Appendix I

GOVERNOR'S SPECIAL ADDRESS

(Televised)—May 2, 1977

On June 14, 1960, our Legislature approved a Law which encompassed and turned into reality the dreams of a great Puerto Rican. Law number 86, which created the first banking institution to the service of our working class, known as "Banco Obrero", pursued the noble purpose of: "Promoting the welfare of the Puerto Rican workers by means of a regular systematic saving habit that would enable them to use the money saved to satisfy their legitimate credit needs".

Six years later, Monday June 21, 1966, the Legislature approved Law number 88 creating the "Banco de Cooperativas". This bank represented another hopeful effort of our people, who were desperately searching for avenues through which they could channel their determination to face and overcome their economic limitations.

Tonight, I have the sad but unavoidable responsibility to announce to the people of Puerto Rico that those efforts and those intentions have been irresponsibly invalidated and frustrated to such a point that these institutions, of such high human and social value, have been left in such precarious economic conditions that only the concentrated effort of all of us who have the responsibility to govern this Island will make it possible to overcome the serious economic situation confronting the Banco Obrero and the Banco de Cooperativas.

Thousands of Puerto Rican workers have their savings in the "Banco Obrero". Savings that represent their hopes for a better future. A future that involves the destiny of their children; whom they want to save from the economic difficulties and anxieties which they suffered. These are thousand of workers who cannot lose everything they have achieved through their sacrifice, dedication, and hope.

We cannot allow this to happen, and do not intend to let it happen without first having exhausted all the means within our reach to try and save, to the extent of our possibilities, an institution that has such an important function in our society. Regardless of whatever setbacks we may have to confront, regardless of the steps we may have to take; I assure you that those thousands of Puerto Rican workers will not be deprived of the desposits and of their share in the Bank's stock which rightfully and honestly belongs to them. The Secretary of Labor and the President of the Government Development Bank are members of the Board of Directors as stated by the Law. Therefore, the Government of Puerto Rico has at least a moral responsibility to these workers who trusted that their economic interests were being well protected.

The "Banco de Cooperativas" is in a similar situation, with the same consequences. The report we have received reveals, among other things, that the Island's cooperative movement has withdrawn its support; a fact that has created problems to increase the Bank's deposits.

Official reports sent by the Secretary of the Treasury reveal a situation of deep professional unconcern in the handling of the funds of these two banks over the last years. After examining the records and after having become aware of the degree of irresponsibility; of the immorality that has surrounded the handling of these bank's funds, I have emotionally gone through a state of surprise to a degree of displeasure. From a degree of displeasure to anger; and from anger to indignation. And when all my capacity of indignation was surpassed, I have emotionally passed on to a state of sorrow and shame, which is what I honestly and frankly feel now.

Sorrow and shame in having to accept that our cherished tradition of honesty has been shattered. A tradition estab-
 eed and affirmed by public men and women from past generations who, regardless of so much adversity and poverty, knew how to teach us that there can be honesty

within poverty and dignity within despair. The fact that one of the most cherished traditions of our people has been seriously weakened, is worry enough to make the sensible men and women in our society feel the anguish of sorrow and shame.

The pertinent authorities will be in charge of informing and explaining to you how a small group of people, inter-related and blinded by the ambition of economic power, were able to establish a highly questionable banking operations center, to turn the banks of the poor into the personal moneyboxes of a fistful of adventurers with boundless desires to obtain riches.

I can tell you now that four people, among them three ex-presidentes of the Banco Obrero, at a given moment took loans for amounts which represented 93 percent of the Bank's capital.

While analyzing this incredible situation, we must remember that the Banco Obrero was created to help the workers and not to serve as an instrument of personal profit to a number of privileged individuals. The sequence of outrageous actions includes loans granted without collateral or without acceptable guarantees. Exchange of guarantees by persons who were part of this small group. Absolute disregard of obligations contracted. The granting of new loans on already matured and *unpaid* loans. A whole series of irresponsibilities difficult to believe and impossible to accept. Today, and during previous days, the Banco Obrero has filed complaints for the collection of monies amounting to more than four million dollars against seven persons. Six of these persons owe a lot more, and new complaints will be filed against them within a few days. What is serious about these cases is not what they owe, since Puerto Rico has been going through an economic crisis. What is really serious is the lack of collateral or sufficient guarantee in the granting of these loans to persons who had some kind of relationship between them-

selves or who possessed great influence in high government spheres.

In the case of the Banco de Cooperativas, even though the group is smaller, the situation has the same voraciousness we have already pointed out. In this case there was one person who thought that the bank was "his bank" in the selfish and immoral sense of the phrase.

I always count on you all, I rely on the patriotic support that this country knows how to generate like no other country when it comes to saving its institutions. I count on it now, as I have done in the past, so that added to the determination of this Administration to save these two institutions, we may be able to save the interests of the workers and of the cooperative movement.

We must not overlook the fact that situations such as this ones are brought about when the forces that rule a country are left aimless and without definite plans for the future. When the ruling class of a country is composed of a self-serving group of individuals and participation is denied to representatives of all the existing sectors, the power established in this vacuum degenerates into situations such as the one we actually confront.

To undermine the confidence in our institutions is the most dangerous attempt that can be made against any society. And this is precisely the result of what has been done. There can be no hesitation in our intent to rescue this confidence. I can assure you that penal actions will be taken against those who with due criminal intention, individually or collectively, through their own personal initiative or by means of a conspiracy have seriously endangered these two institutions.

I want to emphasize the fact that most of the people who owe money to the Banco Obrero and the Banco de Cooperativas are simply debtors who have not incurred in any fault other than not having been able to pay or not

paying. When I speak about those who have plundered these Banks, that is, those who have divested the workers and the cooperative movement of what rightfully belonged to them, I am referring to those individuals who due to their close relationship and economic or other ties with officials or some Director of the Bank; or because of his position in the Bank or his blood ties with persons in high government spheres; have used said influences and relationships to secure loans without a collateral or sufficient guarantee, and who used and disposed of said money belonging to the Bank as if it were their own.

As the first step in our determination to make the Banco Obrero and the Banco de Cooperativas stand on their feet again, I have sent three Bills to the Legislature to be considered within the urgency demanded by the situation. The first two bills carry the intention of empowering the Secretary of the Treasury with the necessary authority that will permit him to make use of additional legal mechanisms directed to strengthen and to make these institutions stand solidly on their feet again.

By means of this legislation, the Secretary of the Treasury would be empowered to substitute any Director in both banks according to his judgement and for the period of time he may deem convenient to insure a healthy and safe conduct within both institutions.

The other Bill provides the Secretary of the Treasury with the necessary authority to purchase classified assets of the Banco Obrero and the Banco de Cooperativas, and to allot the amount of sixty million dollars (\$60,000,000.00) to finance their purchase. In other words, this means that with the express purpose of guaranteeing that both the Banco Obrero and the Banco de Cooperativas will continue to operate and thus serve the purpose for which they were created—which is no other than to be of service to the workers and the cooperative movement—we are assigning sixty million dollars to purchase these bad loans made by

both banks. Then the government will proceed to sell these loans at a discount or to collect them.

This shot of liquid funds will be enough to return the necessary economic strength to these banks, which should provide confidence to the depositors and to the people in general.

With these three bills as well as with other administrative measures it may be deemed necessary to take, we begin to act on our determination to confront this situation in a way worthy of the public responsibility you have delegated on me.

I wish right now to make a clear, open and sincere call to Puerto Rico's working class. These are institutions mainly dedicated to serve you. They are the product of long years of struggle by countless humble and very determined leaders of the labor movement. These two banking organizations are the fulfilment of dreams that many years ago in our history seemed to be impossible. They both have the sentimental value of countless sacrifices and of the unselfishness of many individuals who did not give in to the inhuman pressures imposed upon them by a privileged class. Neither imprisonment nor persecution; nor the hunger to which they were submitted succeeded in affecting the iron-like decision of those men. It is in their name that I am making this call. In their memory we must join forces so that the product of their struggles will not be undermined. It will be your determination as workers what will help to single out those who were and are true leaders of the labor and cooperative movements from those who have been using their leadership titles in both fields for self-serving personal, economic, and political purposes.

Together with this attitude of determination and of support to these institutions that I am asking of you, I am placing the already outlined decision taken by this Administration, which will never allow thousands of workers and members of the cooperatives to be divested of the savings

they have managed to raise with the sweat of their honest labor. Let us all help; particularly the workers, the leaders of the labor movement, the unions, the cooperatives and the public in general to maintain our faith and confidence in these banks which we want to strengthen and for which purpose we are asking the legislature to authorize us to invest sixty million dollars.

If there had been enough moral responsibility among other men in the government, Puerto Rico would not be going through this sad experience. If there had been a clear concept of what it means to direct a country, neither friends, relatives, nor political supporters would have been allowed to perpetrate this assault on two institutions to the service of our humble and simple people.

I ask of all the members of our Legislative Chambers, that within the frame of deliberation which corresponds to each one, they must proceed as quickly as circumstances demand. I have reasons to think that I will not be disappointed.

To my people, I exhort you to a quiet meditation, to pass a calm judgement that will benefit future generations, which after all is the ultimate purpose of all our struggles. I want the people to know that we stand upright and will continue to do so, and that as I said before, and as I will always say: I COUNT ON YOU.

Appendix II

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

CIVIL NO. 77-908

JUDITH RODRIGUEZ QUINONEZ, LUIS S. PARRILLA AND
ANTERO SOLIS LAZU,

Plaintiff,

v.

HONORABLE JULIO CESAR PEREZ officially as Secretary
of the Treasury of the Commonwealth of Puerto Rico,
ARTURO TORREGROSA, AIDA PEREZ, ADALBERTO
ORTIZ, CARLOS FIGUEROA,

Defendants.

ADDITIONAL STIPULATED FACTS

TO THE HONORABLE COURT:

COME the parties to the present case represented by the undersigned counsel and respectfully submit the following additional stipulated facts:

1. That in the local press of the Commonwealth of Puerto Rico the following newspaper articles appeared on the dates hereinafter indicated:

1). El Dia, May 3, 1977, "They loaned money without collateral"

2). El Vocero, May 3, 1977, "CRB denounces tremendous scandal"

3). El Vocero, May 4, 1977, Page 15, Editorial "Integrity and honesty"

4). El Mundo May 4, 1977, Page 16A, "Leader MOU Pedro Grant ask that guilty be brought to trial relative irregularities in Banks"

5). El Mundo May 4, 1977 16A, "Berrios asks Governor to submit evidence of his grave accusations"

6). The San Juan Star, Editoria "A plea for Reason"

7). El Dia, May 9, 1977, 1977, "Jail is demanded for those who robbed the Cooperative Bank"

8). Advertisement by Julio Cesar Perez, May 16, 1977, naming Adalberto Ortiz, Aida Perez Gonzalez, Carlos Figueroa and Arturo Torregrosa in lieu of plaintiffs.

9). El Dia, May 11, 1977, "Removed four Directors of Banco Cooperativo"

10). El Mundo, May 17, 1977, Editoria "Hearings on the Bank"

11). El Mundo, May 13, 1977, "Two Board of Directors to be named today relative two Banks"

12). El Vocero, May 17, 1977 "District Attorney will investigate scandal in banks"

13). The San Juan Star, May 17, 1977 "The Bank Scandal", Page 15, J.M. Garcia Passalcqua.

14). The San Juan Star, May 23, 1977, "Coops League opposes choice for Bank Board"

15). El Mundo, May 26, 1977, "Secretary of the Treasury asked that he should withdraw appointees for the Board of Directors of the Bank"

16). The San Juan Star, May 11, 1977, "Romero says firing of Obrero Board was unavoidable"

2. That on March 9, 1977 the Banco Cooperativo had the following regulations in effect:

"10.8(g) None of the directors as such shall have a right to a salary but the board may from time to time set a fixed sum as compensation for the attendance of board meetings of any authorized committee. The board can also authorize payment for compensation which it considers reasonable for any and all of its members for services rendered to the Board that are not for the assistance to the meeting to the board of directors or such committees.

13.00 Removal of Directors, delegates and members of Committee.

13.01 Causes: The Board of Directors may by the vote of two-thirds, remove or dismiss a director, a delegate or a member of a committee for the following reasons:

- A. for failing to attend three meetings without justified cause;
- B. If such director acts in any form prejudicial to the interest of the bank;
- C. If he is physically or mentally incapacitated to discharge the duties of his position; *

* d) If he should have any direct or indirect economic interest in any enterprise whose business is in competition with the business of the bank.

e) If he does not discharge the dispositions in posed to him by law and this regulations.

13.02 Hearing and appeal (part of the regulation) Before said removal may be effective, the Board shall offer the affected an opportunity of reasonable nature to defend in an extraordinary meeting called for this purpose 3."

3. That plaintiffs have not been the subject of any action by the Board of Directors to remove them from their position of Directors of the Bank.

NOTE: Attorney for the Defendants admits that the newspaper articles were published by the above mentioned newspapers on the day therein indicated, but does not admit the truth of the articles. Also, attorney for the defendants reserves the objection as to the admissibility of said articles on the ground of materiality and pertinency to the matters in issue.

4. That directors received \$25.00 per diem for each day attendance to the meetings of the Board of Directors, plus travelling expenses to and from said meetings.

In San Juan, Puerto Rico, this 17 day of November, 1977.

/s/ A.J. AMADEO MURGA
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